

AMENDED IN SENATE APRIL 2, 2009

**SENATE BILL**

**No. 374**

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**Introduced by Senator Calderon**

February 26, 2009

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~~An act to amend Sections 2234, 2761, and 3541 of the Business and Professions Code, and to amend Section 123462 of the Health and Safety Code, relating to the healing arts. An act to add Chapter 2.7 (commencing with Section 18900) to Division 8 of the Business and Professions Code, relating to personal trainers.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 374, as amended, Calderon. ~~Health care providers: reasonable disclosure: reproductive choices. Personal trainers.~~

*Existing law imposes requirements for a person to hold himself or herself out as a member of a particular vocation or profession, but does not impose those requirements with respect to personal trainers.*

*This bill would provide that a person may not hold himself or herself out as a personal trainer, as defined, unless he or she has a bachelor's degree in either exercise science, kinesiology, fitness science, or another closely related field, or is certified by a national independent organization, as specified, or by an organization accredited by either the Council for Higher Education Accreditation or by the United States Department of Education.*

~~Existing law provides that every person has the right to choose or refuse birth control and that every woman has the right to choose to bear a child or to obtain an abortion. Existing law provides for the licensure and regulation of physicians and surgeons by the Medical Board of California, nurse practitioners by the Board of Registered Nursing, and physician assistants by the Physician Assistant Committee~~

~~of the Medical Board of California. Existing law specifies conduct deemed unprofessional by physicians and surgeons, nurse practitioners, and physician assistants and provides for investigation and discipline of that conduct by the respective licensing boards.~~

~~This bill would provide that a patient is entitled to receive, and a physician and surgeon, nurse practitioner, and physician assistant are obligated to disclose, all information, including all available medical choices, reasonably necessary for the patient to give informed consent with respect to personal reproductive decisions. The bill would provide that failure to fulfill this duty constitutes unprofessional conduct, unless the licensee objects based on moral or religious grounds, advises the patient that other options may be available, and assists the patient in finding a licensee who will fully assist the patient, as specified.~~

~~Because the bill would specify additional requirements under the Medical Practice Act and the Nursing Practice Act, the violation of which would be a crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes-no. State-mandated local program: yes-no.~~

*The people of the State of California do enact as follows:*

1     SECTION 1. Chapter 2.7 (commencing with Section 18900)  
2     is added to Division 8 of the Business and Professions Code, to  
3     read:

4  
5                     CHAPTER 2.7. PERSONAL TRAINERS

6  
7     18900. (a) It shall be unlawful for any person to hold himself  
8     or herself out as a, or use the title of, personal trainer, unless he  
9     or she meets the requirements of paragraph (1) or (2).

10    (1) The person has a bachelor's degree in exercise science,  
11    kinesiology, fitness science, or another closely related field.

12    (2) The person is certified under one of the following:

1 (A) By a national independent organization whose certification  
2 procedures for personal trainers have been approved by the  
3 National Commission for Certifying Agencies (NCCA).

4 (B) As a personal trainer by an organization accredited by  
5 either the Council for Higher Education Accreditation or by the  
6 United States Department of Education.

7 (b) For purposes of this chapter, “to hold himself or herself out  
8 as a, or use the title of, personal trainer” means to state or  
9 advertise or put out any sign or card or other device, or to  
10 represent to the public through any print or electronic media, that  
11 he or she is a personal trainer

12 (c) (1) For purposes of this chapter, “personal trainer” means  
13 an individual who has expertise in developing and implementing  
14 physical fitness and training programs for individuals, and who  
15 provides those services through either a direct financial  
16 relationship with an individual or through an organization that is  
17 compensated for making those services available.

18 (2) The term “personal trainer” shall not include an individual  
19 who only provides training in a particular discipline such as yoga,  
20 pilates, or the use of a particular piece of equipment or device  
21 such as a bicycle, that does not include providing advice or  
22 assistance on other aspects of physical fitness and training, such  
23 as body weight management, cardiovascular fitness, endurance,  
24 and overall muscle and strength development.

25 ~~SECTION 1. Section 2234 of the Business and Professions~~  
26 ~~Code is amended to read:~~

27 ~~2234. The Division of Medical Quality shall take action against~~  
28 ~~any licensee who is charged with unprofessional conduct. In~~  
29 ~~addition to other provisions of this article, unprofessional conduct~~  
30 ~~includes, but is not limited to, the following:~~

31 ~~(a) Violating or attempting to violate, directly or indirectly,~~  
32 ~~assisting in or abetting the violation of, or conspiring to violate~~  
33 ~~any provision of this chapter.~~

34 ~~(b) Gross negligence.~~

35 ~~(c) Repeated negligent acts. To be repeated, there must be two~~  
36 ~~or more negligent acts or omissions. An initial negligent act or~~  
37 ~~omission followed by a separate and distinct departure from the~~  
38 ~~applicable standard of care shall constitute repeated negligent acts.~~

1     ~~(1) An initial negligent diagnosis followed by an act or omission~~  
2     ~~medically appropriate for that negligent diagnosis of the patient~~  
3     ~~shall constitute a single negligent act.~~

4     ~~(2) When the standard of care requires a change in the diagnosis,~~  
5     ~~act, or omission that constitutes the negligent act described in~~  
6     ~~paragraph (1), including, but not limited to, a reevaluation of the~~  
7     ~~diagnosis or a change in treatment, and the licensee's conduct~~  
8     ~~departs from the applicable standard of care, each departure~~  
9     ~~constitutes a separate and distinct breach of the standard of care.~~

10    ~~(d) Incompetence.~~

11    ~~(e) The commission of any act involving dishonesty or~~  
12    ~~corruption which is substantially related to the qualifications,~~  
13    ~~functions, or duties of a physician and surgeon.~~

14    ~~(f) Any action or conduct which would have warranted the~~  
15    ~~denial of a certificate.~~

16    ~~(g) The practice of medicine from this state into another state~~  
17    ~~or country without meeting the legal requirements of that state or~~  
18    ~~country for the practice of medicine. Section 2314 shall not apply~~  
19    ~~to this subdivision. This subdivision shall become operative upon~~  
20    ~~the implementation of the proposed registration program described~~  
21    ~~in Section 2052.5.~~

22    ~~(h) Failure to fulfill the duty of reasonable disclosure to a patient~~  
23    ~~pursuant to subdivision (e) of Section 123462 of the Health and~~  
24    ~~Safety Code.~~

25    ~~SEC. 2. Section 2761 of the Business and Professions Code is~~  
26    ~~amended to read:~~

27    ~~2761. The board may take disciplinary action against a certified~~  
28    ~~or licensed nurse or deny an application for a certificate or license~~  
29    ~~for any of the following:~~

30    ~~(a) Unprofessional conduct, which includes, but is not limited~~  
31    ~~to, the following:~~

32    ~~(1) Incompetence, or gross negligence in carrying out usual~~  
33    ~~certified or licensed nursing functions.~~

34    ~~(2) A conviction of practicing medicine without a license in~~  
35    ~~violation of Chapter 5 (commencing with Section 2000), in which~~  
36    ~~event the record of conviction shall be conclusive evidence thereof.~~

37    ~~(3) The use of advertising relating to nursing which violates~~  
38    ~~Section 17500.~~

39    ~~(4) Denial of licensure, revocation, suspension, restriction, or~~  
40    ~~any other disciplinary action against a health care professional~~

1 ~~license or certificate by another state or territory of the United~~  
2 ~~States, by any other government agency, or by another California~~  
3 ~~health care professional licensing board. A certified copy of the~~  
4 ~~decision or judgment shall be conclusive evidence of that action.~~

5 ~~(5) Failure of a nurse practitioner to fulfill the duty of reasonable~~  
6 ~~disclosure to a patient pursuant to subdivision (e) of Section 123462~~  
7 ~~of the Health and Safety Code.~~

8 ~~(b) Procuring his or her certificate or license by fraud,~~  
9 ~~misrepresentation, or mistake.~~

10 ~~(c) Procuring, or aiding, or abetting, or attempting, or agreeing,~~  
11 ~~or offering to procure or assist at a criminal abortion.~~

12 ~~(d) Violating or attempting to violate, directly or indirectly, or~~  
13 ~~assisting in or abetting the violating of, or conspiring to violate~~  
14 ~~any provision or term of this chapter or regulations adopted~~  
15 ~~pursuant to it.~~

16 ~~(e) Making or giving any false statement or information in~~  
17 ~~connection with the application for issuance of a certificate or~~  
18 ~~license.~~

19 ~~(f) Conviction of a felony or of any offense substantially related~~  
20 ~~to the qualifications, functions, and duties of a registered nurse,~~  
21 ~~in which event the record of the conviction shall be conclusive~~  
22 ~~evidence thereof.~~

23 ~~(g) Impersonating any applicant or acting as proxy for an~~  
24 ~~applicant in any examination required under this chapter for the~~  
25 ~~issuance of a certificate or license.~~

26 ~~(h) Impersonating another certified or licensed practitioner, or~~  
27 ~~permitting or allowing another person to use his or her certificate~~  
28 ~~or license for the purpose of nursing the sick or afflicted.~~

29 ~~(i) Aiding or assisting, or agreeing to aid or assist any person~~  
30 ~~or persons, whether a licensed physician or not, in the performance~~  
31 ~~of, or arranging for, a violation of any of the provisions of Article~~  
32 ~~12 (commencing with Section 2220) of Chapter 5.~~

33 ~~(j) Holding oneself out to the public or to any practitioner of~~  
34 ~~the healing arts as a “nurse practitioner” or as meeting the standards~~  
35 ~~established by the board for a nurse practitioner unless meeting~~  
36 ~~the standards established by the board pursuant to Article 8~~  
37 ~~(commencing with Section 2834) or holding oneself out to the~~  
38 ~~public as being certified by the board as a nurse anesthetist, nurse~~  
39 ~~midwife, clinical nurse specialist, or public health nurse unless the~~  
40 ~~person is at the time so certified by the board.~~

~~(k) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensed or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the Board of Podiatric Medicine, the Dental Board of California, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.~~

~~The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates to minimize the risk of transmission of blood-borne infectious diseases from health care provider to patient, from patient to patient, and from patient to health care provider, and of the most recent scientifically recognized safeguards for minimizing the risks of transmission.~~

~~SEC. 3. Section 3541 of the Business and Professions Code is amended to read:~~

~~3541. The following shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter:~~

~~(a) Violating, attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this article, the Mosecone-Knox Professional Corporation Act, or any regulations duly adopted under those laws.~~

~~(b) Failing to fulfill the duty of reasonable disclosure to a patient pursuant to subdivision (c) of Section 123462 of the Health and Safety Code.~~

~~SEC. 4. Section 123462 of the Health and Safety Code is amended to read:~~

1     ~~123462. The Legislature finds and declares that every~~  
2     ~~individual possesses a fundamental right of privacy with respect~~  
3     ~~to personal reproductive decisions. Accordingly, it is the public~~  
4     ~~policy of the State of California that:~~

5     ~~(a) Every individual has the fundamental right to choose or~~  
6     ~~refuse birth control.~~

7     ~~(b) Every woman has the fundamental right to choose to bear~~  
8     ~~a child or to choose and to obtain an abortion, except as specifically~~  
9     ~~limited by this article.~~

10    ~~(c) The state shall not deny or interfere with a woman's~~  
11    ~~fundamental right to choose to bear a child or to choose to obtain~~  
12    ~~an abortion, except as specifically permitted by this article.~~

13    ~~(d) Each person who seeks health care treatment, consultation,~~  
14    ~~or information pertaining to the person's personal reproductive~~  
15    ~~decisions from a physician and surgeon licensed pursuant to~~  
16    ~~Chapter 5 (commencing with Section 2000) of Division 2 of the~~  
17    ~~Business and Professions Code, a nurse practitioner licensed~~  
18    ~~pursuant to Article 8 (commencing with Section 2834) of Chapter~~  
19    ~~6 of Division 2 of the Business and Professions Code, or a~~  
20    ~~physician assistant licensed pursuant to Chapter 7.7 (commencing~~  
21    ~~with Section 3500) of Division 2 of the Business and Professions~~  
22    ~~Code shall be entitled to receive all information reasonably~~  
23    ~~necessary for the patient to give informed consent in determining~~  
24    ~~whether to submit to medical treatment, including disclosure of~~  
25    ~~all available medical choices.~~

26    ~~(e) Each physician and surgeon, nurse practitioner, and physician~~  
27    ~~assistant described in subdivision (d) has an affirmative duty of~~  
28    ~~reasonable disclosure to his or her patient of all available medical~~  
29    ~~choices with respect to the patient's personal reproductive~~  
30    ~~decisions. Failure of a physician and surgeon, nurse practitioner,~~  
31    ~~or physician assistant to fulfill this duty shall constitute~~  
32    ~~unprofessional conduct and grounds for suspension of the licensee's~~  
33    ~~license, unless all of the following circumstances exists:~~

34    ~~(1) The licensee refuses on moral or religious grounds to provide~~  
35    ~~disclosure pertaining to an available medical choice.~~

36    ~~(2) The licensee immediately informs the patient, either orally~~  
37    ~~or in writing, that other medical choices may be available.~~

38    ~~(3) The licensee promptly assists the patient in finding a licensee~~  
39    ~~who will fully fulfill the duty of reasonable disclosure to the~~  
40    ~~patient.~~

1     ~~(f) Each medical office or other health care facility that provides~~  
2     ~~obstetric or gynecological care shall display prominently a notice~~  
3     ~~of a patient's right pursuant to subdivision (d) and a licensee's~~  
4     ~~duty pursuant to subdivision (e).~~

5     ~~SEC. 5. No reimbursement is required by this act pursuant to~~  
6     ~~Section 6 of Article XIII B of the California Constitution because~~  
7     ~~the only costs that may be incurred by a local agency or school~~  
8     ~~district will be incurred because this act creates a new crime or~~  
9     ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
10    ~~for a crime or infraction, within the meaning of Section 17556 of~~  
11    ~~the Government Code, or changes the definition of a crime within~~  
12    ~~the meaning of Section 6 of Article XIII B of the California~~  
13    ~~Constitution.~~